S.B.CIVIL WRIT PETITION NO.1956/2000
(Dungar Das v. UCO Bank and Others).

DATE OF ORDER:

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Sanjeet Purohit, for Petitioner.
Mr.Jagdish Vyas, for Respondents.

The petitioner has filed the instant petition, praying therein, inter alia, that the impugned judgment and award dated 21.12.99 (Annexure 9) be quashed and set aside so far as it refused to reinstate the petitioner in service and instead grants compensation of Rs.20,000/- to the petitioner and the respondents be directed to reinstate the petitioner in service from the date his service were terminated with all back wages.

The facts giving rise to the instant petition are that on May 7, 1994, one Dungar Das – the present petitioner was appointed as Class IV employee on daily wage basis. He was paid Rs.10/- per day, which was later on enhanced upto Rs.40/- per day. It has been stated in the petition that the work of Peon was taken from him. He used to clean the Bank, to serve drinking water to the employees of the Bank, to fill up water in the coolers of the Bank, to set stationery and record, to sew vouchers of the Bank and to ptach the torned and cut currency notes. It has further been stated that he was given artificial brakes in service from time to time, so that he may not claim his legal rights in respect of his service. The services of the petitioner were terminated by the Respondent No. 4 – the Branch Manager, UCO Bank, Branch Chomu, Tehsil Shergarh, District – Jodhpur – by a verbal order dated May 26, 1997 .

It is submitted by the learned counsel for the petitioner that the petitioner worked on the post of Class IV employ on daily wages in the respondent – Bank from 7.5.94 to 26.5.97 and completed more than 240 days in a claendar year. His services have been terminated by the Bank without following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947').

It is further submitted by the learned counsel for the petitioner that the post of Class IV employee is available with the Bank-respondent. Despite that, his services have been terminated and prior to the termination of his services, the petitioner was neither given any notice or salary in lieu of notice, nor was given compensation in lieu of termination.

It is also submitted by the learned counsel for the petitioner that the respondent-Bank has also admitted in the reply that the petitioner was engaged for cleaning of the bank building. He was initially paid Rs.10/- per day and later on, the daily wages were enhanced to Rs.40/- per day. Apart from that, the learned counsel has also invited my attention to the affidavits (Annexures 5 & 6) of Shri Ramnath Mishra and Shri Rampat Yadav, Regional Manager and Branch Manager of the Bank, in which they have stated that the petitioner was engaged in the Bank as a daily wage employee. Learned counsel has also drawn by attention to the observations of the Tribunal, in which the Tribunal has observed that prior to 26.5.97, the petitioner has worked for 245 days. The Tribunal also obseved that while granting appointment to the petitioner, the procedure for such employment was not followed by the respondent-Bank It was submitted that prior to terminating the services of the petitioner, the procedure laid down under Section 25F of the Industrial Disputes Act, 1947 was not followed. Neither the petitioner was given one month'sx notice, nor he

was given salary in lieu of notice, nor any inquiry was conducted. Not only that, even retrenchment compensation was not given to him.

The Tribunal also observed that the petitioner was not appointed by a regular process of selection against any permanent post.. Therefore, reinstatement of the petitioner would be to put premium to illegality or invalidity. The relief of reinstatement was, therefore, rejected by the learned Tribunal. However, the Tribunal has granted a sum of Rs.20,000/- to the petitioner as compensation and Rs.1,000/- as litigation expenses with 12% interest, if the amount is not paid within two months of the publication of the award.

In support of his contention, the learned counsel for the petitioner has referred to the cases of M/s.Tulsidar Paul v. The Second Labour Court, W.B. And Others ([1972] 4 SCC 205), Anand Kumar Sharma v. The Executive Engineer and Another (2004 (1) WLC (Raj.) 168), Puran Chand Saini v. the General Manager UCO Bank & Others (1992 (1) WLC p.479), State of Rajasthan & Others v. Shri Mahendra Joshi & Another (2003 (1) WLC (Raj.)47) and Prabud Dayal Jat v. Alwar Sahkari Bhumi Vikas Bank Ltd. & Others (1989 (1) RLR 439). But these authorities are of no help to him as the reinstatement is a discretion of the Labour Court and and looking to the peculiar facts and circumstances of the case, the learned Labour has granted compensation in lieu of reinstatement.

Learned counsel for the respondents submitted that the petitioner has not been given appointment by a proper selection process. The Branch Manager was not authorised to appoint the petitioner, therefore, the learned Tribunal has rightly refused the reinstatement of the petitioner in service and the judgment

and award dated 21.12.99 passed by the learned Tribunal is perfectly legal and requires no interference. He submitted that the Hon'ble Apex Court has also held time and again that every employee in public service should be appointed after advertising the vacancis and after adopting due process for selection and all the eligible persons should br granted equal opprotunity to be considered for appointment. Before granting any such appointment, the applications should have been invited, vacancy should be notified and then even ad-hoc appointment has to be made in accordance with the provisions of Articles 14 and 16 of the Constutiton. Apart from that, such practice of back – door entry has been deprecated by the Hon'ble Apex Court in various judgments. The learned counsel submitted that the petitioner himself has admitted in his cross-examination that he has not faced any selection process. Therefore, the Tribunal was justified in refusing re-instatement to him and rightly awarded compensation of Rs.20,000/- in lieu of reinstatement.

It is further submitted by the learned counsel for the respondents that the initial appointment of the petitioner was void and looking to the peculiar facts and circumstances of the case, he has no right to be reinstated in service.

The Labour Court has wide discretion under Section 11-A of the Industrial Disputes Act in the matter of award of relief in the peculiar facts and circumstances of the case and the Labour Court, instead og granting the relief of reinstatement, can grant compensation in particulars. In this view of the matter, the Tribunal has rightly awarded compensation in lieu of reinstatement. It will be relevant to reproduce Section 11A of the Industrial Disputes Act, 1947, which reads as under :-

> "11A. Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or

> dismissal of workmen. - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and , in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

Thus, looking to the peculiar facts and circumstances of the case, the Tribunal has wide discretion under Section 11-A of the Industrial Disputes Act, 1947 to grant compensation in lieu of reinstatement. The learned Tribunal has considered the evidence produced on behalf of the parties as also relevant rules and judgments of the Hon'ble Apex Court as well as this Hon'ble High Court and, thereafter, has held that the petitioner is not entitled to be reinstated in service. The Tribunal has rightly exercised its discretion to grant compensation in lieu of reinstatement.

It is a settled position of law that the discretion, which has been exercised judicially by the Labour Court should not be disturbed in the writ jurisdiction under Articles 227 & 227 of the Constitution of India.

It is also submitted by the learned counsel for the respondents that the petitioner was never appointed by the Competent Authority, nor he has gone through the due process of selection. Apart from that, for intervention by the Hon'ble High Court, there must be a case of flagrant abuse of fundamental principles of law and justice.

In support of the contentions, learned counsel for the respondents has referred to the cases Argun Singh & Others v. Labour Court, Jodhpur & Others

(2004 (4) WLC (Raj.)145), District Education Officer (EE), Banswara v. Bapulal and Others (2004 (3) WLC (Raj.) 142), Dharamveer Singh v. State of Rajasthan & Others (1988 (3) RLW 1722), Sushil Kumar Mathur v. State of Rajasthan & Others (2000 (4) WLC (Raj.)669) and Hari Mohan Rastogi v. Labour Court and another (AIR 1984 SC 502) and submitted that the petitioner is not entitled for reinstatement in service, because he was not appointed by way of regular process.

Heard learned counsel for the parties.

It is settled position that an employee, who is out of job for a number of years, loses his proficiency, productivity and efficiency. In case, the respondents are directed to reinstate the petitioner in service after such a long time, it will lead to complex situations. It is evident from the record that the petitioner did not go through a process of regular selection and was merely appointed on daily wage basis. The reinstatement cannot be directed in every case. The question whether an employee shold be reinstated or not depends upon various factors viz. (1) the nature of employment; (2) the period between the date of appointment and date of termination, i.e., length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case, a person is appointed for a short period of time without making him to go through a process of selection and the gap between the date of termination and the award of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25F of the Industrial Disputes Act.

In Gujarat State Road Transport Corporation and another v. Muly Amra

(1995 Supp (4) SCC 548), the Supreme Court, while keeping in view the long gap between the date of termination of the service of workman in violation of Section 25F of the Industrial Disputes Act, 1947 and the date of conclusion of the proceedings, awarded compensation in lieu of reinstatement with back wages. The Supreme Court, in this regard, directed as follows:

> "In the result, we allow this appeal, set aside the order of the High Court directing reinstatement in service with full back wages and instead direct that the appellant-Corporation shall pay a sum of Rs.75,000 to the respondent in lieu of reinstatement with back wages and in full and final satisfaction of all his claims. We may, however, clarify that if he has any claim in regard to provident fund, the same may be refunded to him, if not done so far. The amount of compensation wil be paid within two months from today, failing which interest will run at 18 per cent per annum."

Again, in Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and others (1995 Supp (4) SCC 549), the Supreme Court looking to the long delay between the date of termination and the conclusion of the proceedings directed payment of compensation in lieu of reinstatement inspite of the fact that it was found that the services of the employee were terminated in violation of Section 25F of the Industrial Disputes Act.

In Ratan Singh v. Union of India & Another ([1997] 11 SCC 396), the Supreme Court having regard to the fact that services of the appellant were terminated 20 years back in violation of the Industrial Disputes Act, directed payment of compensation in lieu of reinstatement. Their Lordships of the Supreme Court held that having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement.

In Sain Steel Products v. Naipal Singh & Others (2003) 4 SCC 628, their Lordships of the Supreme Court adopted the same principle and held that we do not think it appropriate to put him back in service. It would be proper that some reasonable compensation be paid to him in lieu of back wages and reinstatement.

In Murari Lal Sharma v. Nehru Yuba Kendra Sangathan, 96 (2002) Delhi Law Times 412 (DB), a Division Bench of the Delhi High Court taking stock of various judgments rendered by the Supreme Court, took the following view :-

> "In the instant case, the appellant had barely worked in the establishment of the respondent as an Accounts Clerk for a period of about 240 days when his services were terminated in the year, 1988. Between the date of termination and as as of now about 13 years have gone by. The same considerations as are detailed in para 28 of the decision of this Court in Delhi Transport Corporation v. Presiding Officer and Another (supra), are applicable to the instant case. The learned Single Judge was, therefore, entirely right in directing the payment of compensation instead of reinstatement with back wages."

In Ram Niwas v. The Mining Engineer & Others, D.B.Civil Special Appeal (W) No.270/2003, decided on 24.4.2003, a Division Bench of this Court had taken a similar view and has held as under :-

> "Keeping in view of the judgments of the Supreme Court in Rolston John v. Central Government Industrial Tribunal and Labour Court and Others., 1995 Supp (4) SCC 549 and Rattan Singh v. Union of India &Another, (1997) 11 SCC 396, the Delhi High Court held that we have considered the submissions of the learned counsel for the parties. The only question which needs to be deicded is whether the learned Single Judge was legally justified in modifying the award of the Tribunal by directing the respondents to pay a sum of Rs.60,000/- to the appellant in lieu of reinstatement and back wages. It appears to us that the view taken by the learned Single Judge is supported not only by a decision of the Division Bench of this Court in Delhi Transport Corporation v.

> Presiding Officer and another (supra), but also by the decision of the Supreme Court in Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and others (supra), and Rattan Singh v. Union of India & another (Supra)."

It may be mentioned that there was no sanctioned post of Class IV employee. Apart from that, the appointment was not made by the Competent Authority and it was made dehors the rules. The petitioner was given appointment on daily wage basis on 7.5.1994. Now, we are running in 2005. The period of more than ten years has passed and now, if the petitioner is reinstated back in service, then it would create numerous complications. Therefore, looking to the peculiar facts and circumstances of the case, the Tribunal was perfectly justified in exercising its judicious discretion as laid down under Section 11-A of the Industrial Disputes Act, 1947.

In this view of the matter, as held by the Hon'ble Apex Court, in a number of the aforesaid Judgments, the appointment of the workman on daily wage basis does not provide him any right of regularisation. In peculiar facts and circumstances of the case, the compensation can be granted in lieu of reinstatement. The Labour Court has the discretion and when it had exercised the discretion by awarding only compensation, then on facts of the case, it cannot be said that the Labour Court has committed any error much less error on facts or law or jurisdiction error which calls for interference of this Court in its supervisory jurisdiction under Articles 226 and 227 of the Constitution. Thus, the Labour Court has committed no illegality in denying regularisation and reinstatement to the workman.

In the result, the writ petition lacks merit and I do not find any

substance in the instant petition. Accordingly, the same is hereby dismissed.

(R.P.VYAS), J.

scd.